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July 21, 2010

Commissioner for Patents
Attention: Certificates of Correction Branch
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office via EFS-Web on the date below:

July 21, 2010

Date

/Mark T. Garrett/

Mark T. Garrett

RE: *Request for Corrected Patent under 37 C.F.R. § 1.332(b)*
Patent No. Re41,442 Dated: July 20, 2010
Application No. 08/828,330 Confirmation No.: 4766
Entitled: "INSULATED REMOVABLE POND COVER" – William D. MORGAN et al.
Our Ref.: IAEC:007USR1

Commissioner:

Applicants respectfully request that the Director issue a corrected patent for Re 41,442 due to the number and nature of Patent Office errors in the reissued patent. Because Applicants do not believe that a Certificate of Correction would be appropriate, not form PTO-1050 has been included. Should the Office deny this request, Applicants will submit form PTO-1050 in a request for a Certificate of Correction.

The errors are as follows:

- 1) FIGS. 3, 4, and 5 in the reissued patent were **canceled** in the "Amendments to the Drawings" section on page 3 of the August 27, 2007 response/amendment. They, therefore, **should not appear in the reissued patent**. A copy of the August 27, 2007 response is attached to this request. Here is an image of the cancelation instruction, the relevant portion being underlined:

July 21, 2010

Page 2

Amendments to the Drawings:

Pursuant to 37 C.F.R. § 1.173(b)(3), please cancel New Figures 3, 4, and 5, which were noted by the Examiner as accepted in the Office Action mailed September 13, 2004. Please replace the version of Figure 2 that was noted by the Examiner as accepted in the September 13, 2004 Office Action with Amended Figure 2 appearing on the Replacement Sheet attached to this response. An explanation of the changes to Figure 2 appears in the Remarks section.

- 2) The three added paragraphs in the reissued patent describing FIGS. 3, 4 and 5 in the "DESCRIPTION OF THE DRAWINGS" section (col. 1, lines 34-38) were *canceled* in the "Amendments to the Specification" section on page 4 of the August 27, 2007 response/amendment. They, therefore, *should not appear in the reissued patent*. Here is an image of the cancellation instruction, the relevant portion being underlined:

Amendments to the Specification:

Pursuant to 37 C.F.R. § 1.173(b)(1), please amend the specification as follows:

Please delete the paragraph that begins "Fig. 3 is the view of . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins "Fig. 4 is the view of . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins "Fig. 5 is the view of . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins "The present invention is . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please replace the two paragraphs that begin beneath the "DESCRIPTION OF THE INVENTION:" heading on page with the following two paragraphs:

- 3) The added paragraph in the reissued patent that begins "The present invention is ..." beneath the "DESCRIPTION OF THE INVENTION" section (col. 1, lines 41-50) was *canceled* in the "Amendments to the Specification" section on page 4 of the August 27, 2007

response/amendment. It, therefore, **should not appear in the reissued patent**. Here is an image of the cancellation instruction, the relevant portion being underlined:

Amendments to the Specification:

Pursuant to 37 C.F.R. § 1.173(b)(1), please amend the specification as follows:

Please delete the paragraph that begins “Fig. 3 is the view of . . .”, which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins “Fig. 4 is the view of . . .”, which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins “Fig. 5 is the view of . . .”, which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins “The present invention is . . .”, which was added in the paper filed by Applicant on December 10, 1999.

- 4) The two paragraphs in the reissued patent beneath the “DESCRIPTION OF THE INVENTION” section that begin with “The pond cover comprises a plurality of generally ...” (col. 1, line 52 - col. 2, line 13) **do not include** the revisions that were made to those two paragraphs in the “Amendments to the Specification” section beginning on page 4 of the August 27, 2007 response/amendment. Specifically, **element number 10 was added** to the first of those two paragraphs, and **element 20 was added** to the second of those two paragraphs, and **neither of those added element numbers appears in the reissued patent**.

July 21, 2010

Page 4

Conclusion:

These Patent Office complicate this reissued patent, which is a relatively short document, and correcting them through a Certificate of Correction will produce a confusing final document for the reader. Given these factors, Applicants respectfully submit that correction of these errors through a Certificate of Correction would be inappropriate inform, and request that the Director issue a corrected version of this reissued patent under Rule 322(b).

Sincerely,

/Mark T. Garrett/

Mark T. Garrett

MTG
Attachment

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
William D. Morgan

Serial No.: 08/828,330

Filed: March 28, 1997

For: INSULATED REMOVABLE POND
COVER

Group Art Unit: 1723

Examiner: Robert J. Canfield

Atty. Dkt. No.: IAEC:007USR1/MTG

Confirmation No. 4766

CERTIFICATE OF ELECTRONIC SUBMISSION
37 C.F.R. § 1.8

I certify that this correspondence is being electronically filed with the United States Patent and Trademark Office via EFS-Web on the date below from Austin, Texas prior to 11:59 p.m. Central Time:

August 27, 2007
Date

/Mark T. Garrett/
Mark T. Garrett

RESPONSE TO MAY 4, 2007 OFFICE ACTION

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

This paper responds to the May 4, 2007 Office Action, and is filed concurrently with a petition for a 1-month extension of time. If the petition is absent, consider this the petition and an authorization to deduct any necessary fees from Fulbright & Jaworski Account No.: 50-1212/IAEC:007USR1. Reconsideration is respectfully requested.

Amendments to the Claims:

Pursuant to 37 C.F.R. § 1.173, please cancel claims 21, 28-32, 34-40, 43-45, and 57-58.

Please amend claims 56 and 59 as follows:

56. (Amended) A cover and wastewater combination comprising:
wastewater that includes sewage and/or industrial waste;
a plurality of panels positioned over the wastewater, the panels being removably linked
together to form a non gas-tight cover system, each panel comprising a
geomembrane; and
insulation material sealed inside each panel by a weld.

59. (Amended) The cover and wastewater combination of claim 56, where each panel
includes multiple openings, the panels overlap, and the panels are removably linked together with
fasteners.

Amendments to the Drawings:

Pursuant to 37 C.F.R. § 1.173(b)(3), please cancel New Figures 3, 4, and 5, which were noted by the Examiner as accepted in the Office Action mailed September 13, 2004. Please replace the version of Figure 2 that was noted by the Examiner as accepted in the September 13, 2004 Office Action with Amended Figure 2 appearing on the Replacement Sheet attached to this response. An explanation of the changes to Figure 2 appears in the Remarks section.

Amendments to the Specification:

Pursuant to 37 C.F.R. § 1.173(b)(1), please amend the specification as follows:

Please delete the paragraph that begins "Fig. 3 is the view of . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins "Fig. 4 is the view of . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins "Fig. 5 is the view of . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please delete the paragraph that begins "The present invention is . . .", which was added in the paper filed by Applicant on December 10, 1999.

Please replace the two paragraphs that begin beneath the "DESCRIPTION OF THE INVENTION:" heading on page with the following two paragraphs:

The pond cover comprises a plurality of generally rectangular casings or panel units 1 linked together. The number and size of the casings 1 will vary depending upon the size of the pond 10 to be covered, and the casings 1 are arranged in as many rows as are needed. Generally each casing 1 will be about seven and one-half feet wide and approximately forty feet long. Each casing 1 is filled with a layer of insulation 3 and then sealed at either end and along either side by a fusion weld 4. The casings 1 are made of geomembrane (a high density polyethylene material).

Adjacent casings 1 are linked together in overlapping spaced relationship by means of a grommet and cable system. Each casing 1 is provided with a plurality of grommets 5 at either end and along either side, positioned outside of the welded area 4 so as not to break the seal. The total number of grommets 5 per casing 1 can vary. After the grommets 5 of adjacent casings 1 are lined up in vertical spaced relationship to each other, a cable 7 is passed through the openings

of the grommets 5, is formed into a loop above the panels 1 and is secured in position by a cable clamp 11 attached to the cable 7 beneath the casings 1. A heavy tie-down cable 12 is then passed through all the loops of the cables 7 in the row and is secured at either end to an anchor post 20 such as a concrete deadhead, in a conventional manner such as tying the cable 12 to a rod with a nut at either end and securing the cable 12 with a cable clamp. If wind getting underneath the cover is a problem, additional cables can be passed through the cable loops 7 perpendicular to cable 12 at either end and in the middle of the series of casings 1.

REMARKS

A. Rule 173(c) Statement of Status of Claims and Support for Claim Changes

Claims 1-9, 11, 12, 14, 19, 20, 22, 50-56, and 59-70 are pending, and claims 10, 13, 15-18, 21, 23-49, 57, and 58 are canceled. Claims 21, 28-32, 34-40, 43-45, 57, and 58 have been canceled by this paper.

Claims 56 and 59 have been amended by this paper. An explanation of the amendment to these claims and an explanation of the support for the same in the original patent is provided in the following chart:

Claim Amendment	Example Support in Original Patent for the Amendment
56. The limitations from claims 57 (each panel comprises a geomembrane) and 58 (insulation material sealed inside each panel by a weld) have been added.	Col. 1, lines 37-42.
59. This claim now depends from claim 56 instead of canceled claim 58.	FIG. 1 of the original patent; col. 1, line 31 – col. 2, line 10.

B. New Supplemental Declarations Filed

New supplemental declarations are submitted pursuant to Rule 175(b)(1).

C. Explanation of Changes to Figure 2 and the Specification

The version of Figure 2 that was noted by the Examiner as accepted in the September 13, 2004 Office Action has been replaced by Amended FIG. 2 appearing on the Replacement Sheet attached to this response. The changes to Amended FIG. 2 are as follows.

Applicants have extended the ends of the left-most cable 12 in the figure into two added boxes, each marked 20, which represent the anchor posts described in the second paragraph beneath the DESCRIPTION OF THE INVENTION heading. Additionally, a portion of a generic

border representing the edge of a pond (referenced, e.g., in the first paragraph beneath the DESCRIPTION OF THE INVENTION heading) has been added near the top of Figure 2. The border is labeled 10. The features shown in the figure have been enlarged relative to the Examiner's version of the figure that is being replaced, and the shape and direction of some of the lead lines has changed.

The specification has been amended to specify element numbers 10 and 20 in the appropriate locations.

D. The Consent of All Assignees Was Filed

On March 14, 2006, Applicants submitted both a Statement Under 37 CFR 3.73(b) on form PTO/SB/96 executed by Industrial & Environmental Concepts, Inc. (IEC), the sole assignee, and a Consent of Assignee on form PTO/SB/53 referencing the Rule 3.73(b) Statement and executed by IEC. Courtesy copies of both of these documents and the postcard filed with them that references them are included with this response as Exhibit 1. This addresses the Office's paragraph 5 on page 3 of the outstanding Action.

E. The Written Description and New Matter Rejections Are Overcome

The Office rejects pending claims 5-9, 11, 12, 14, 19-22, and 50-70 as failing to comply with the written description requirement and as presenting new matter. Action at pp. 3-4. Claim 28, which recited de-linking and re-linking, has been canceled (along with its dependents) in the interest of expediting prosecution. Thus, the Office's position about "de-linking" and "re-linking," which are terms recited only in those claims, is moot. However, Applicants respectfully traverse with respect to the rejection of the pending claims.

1. Independent Claim 5

Independent claim 5 recites a cover and wastewater combination comprising:

wastewater that includes sewage and/or industrial waste;

at least two panels positioned over the wastewater, each panel having a side characterized by an edge and a plurality of openings spaced apart from the edge, the panels being removably linked together in overlapping relationship such that gas from the wastewater can flow from underneath portions of the panels, through gaps between adjacent panels, to a location above the panels; and

the openings in one of the panels being positioned above the openings in the other panel, and a fastener being disposed through at least two adjacent openings.

The Office appears to take issue with the phrase “the panels being removably linked together in overlapping relationship such that gas from the wastewater can flow from underneath portions of the panels, through gaps between adjacent panels, to a location above the panels” and specifically asserts that “there is no mention whatsoever of gases, gaps, or the desirability to allow gases to escape/travel/migrate through gaps[,]” nor is there a discussion of removably linking the panels. Action at pp. 3-4.

A claim satisfies the written description requirement if there is sufficient information in the original disclosure to reasonably convey to one of ordinary skill in the art that the inventors had possession of the claimed subject matter when the original disclosure was filed. *See, e.g., Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1320 (Fed. Cir. 2003). Both the text and figures of the application may provide the required support. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997). There is no *in haec verba* requirement, and newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure. MPEP 2163. A disclosure conveys subject matter implicitly or inherently when that subject matter would be understood as necessarily being present to one of ordinary skill in the art. *Kennecott Corp. v. Kyocera Int'l, Inc.*, 835 F.2d 1419, 1423 (Fed. Cir. 1987).

a. There is adequate support for the “removably linked” claim language.

The original application provides adequate support for the “removably linked” language in claim 5. The two panels shown in FIG. 1 are removably linked together using cables 7 that are placed through the overlapping grommets 5 in the edges of the two panels and secured with cable clamps 11:

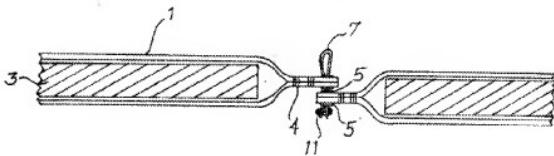


FIG. 1.

Dennis H. Gerber explains in his Rule 132 declaration that someone who had participated in the design and installation of either liners, floating covers, or both, for at least about 6 months to one year would have “would have recognized from reading the application that the disclosed panels could necessarily be de-linked from each other.” 37 C.F.R. § 1.132 Declaration of Dennis H. Gerber at ¶¶ 5-6. Mr. Gerber is an independent consultant on floating cover designs, and has significant experience in the design and installation of floating covers. *Id.* at ¶¶ 1-2. He has been retained by the assignee of this application (Industrial & Environmental Concepts, Inc. (IEC)) on multiple occasions over the past 11 years to consult about some of the assignee’s floating cover designs. *Id.* at ¶ 3. He was compensated for the time it took to prepare his declaration. *Id.*

Mr. Gerber explains that the application describes how to removably link panels together using cables and cable clamps on page 2 and shows this in the figures. *Id.* at ¶ 6. He explains that:

At the time the application was filed, relevant individuals [those who had participated in the design and installation of either liners, floating covers, or both, for at least about six months to one year] would have been familiar with the use of cables and cable clamps as mechanical fasteners for temporarily connecting two items together; cables and cable clamps were well-known, and it was also well-known that they could be taken apart by simply unthreading some bolts and pulling the cable out of the cable clamp. Thus, it would have been clear to relevant individuals at the time the application was filed that the application disclosed a cover system made from removably linked panels.

Id. at ¶ 6.

b. There is adequate support for gas flowing through the gaps.

The original application also provides adequate support for the gas flowing from underneath portions of the panels that through gaps between adjacent panels to a location above the panels. First, there will necessarily be gaps between adjacent panels arranged, for example, as disclosed. This follows from the fact that the intermittently-spaced connections created using cables and cable connectors (*see* FIG. 2) are not sealed connections. Mr. Gerber explains this:

At the time the application was filed, relevant individuals would have recognized that the linked panels described in the application necessarily had gaps between them because they are linked together with cables and cable clamps. Cables and cable clamps necessarily create non-sealed connections between the overlapping edges of the panels, especially when those connections are spaced apart from each other such as shown in Figure 2. Thus, relevant individuals would have recognized at the time the application was filed that there would necessarily be gaps between the overlapping edges in the space between the adjacent link locations.

Gerber Declaration at ¶ 7.

Second, the application discloses placing the cover systems over wastewater, and explicitly discusses an advantage of using the disclosed cover systems as retaining heat in the

pond and “speeding biodegradation of organic material.” Page 1. Such biodegradation would necessarily have produced gas that rose off the surface of the pond. Mr. Gerber explains this:

The application discusses “settling ponds used for holding sewage and industrial wastes.” Page 1. It also discusses the primary advantage of the invention is that it could be removed, such that the pond could be dredged and the cover re-used. Page 1. It also specifies that another advantage is that the cover insulates the pond, speeding biodegradation of organic material. Page 1. Gas gets produced when biological material, such as sewage or industrial waste, degrades. At the time the application was filed, relevant individuals would have known this, and would have recognized from these page 1 statements and the application as a whole that the application disclosed placing a cover system over wastewater that produced gas.

Gerber Declaration at ¶ 8.

Finally, gas rising off wastewater in a pond would necessarily flow through the gaps between the adjacent, removably-linked panels. While some gas could flow through the openings in the edges of the panels that are partially occupied by the cables, most of it would flow through the gaps between the overlapping panel edges in the space between the adjacent link locations, as Mr. Gerber explains:

Relevant individuals would also have recognized at the time the application was filed that such gas would necessarily escape from underneath the cover through at least some of the gaps I discuss in paragraph 7 above. While some of the gas could escape through the portions of the openings through which the cables were placed, most of it would go through the gaps I discuss in paragraph 7, and relevant individuals would have recognized this at the time the application was filed.

Gerber Declaration at ¶ 8.

* * *

For these reasons, there is adequate written description support for the claim language “the panels being removably linked together in overlapping relationship such that gas from the wastewater can flow from underneath portions of the panels, through gaps between adjacent panels, to a location above the panels[,]” and the written description and new matter rejections of

claim 5 and its pending dependent claims should be withdrawn. *See Ex parte Welsh et al.*, Appeal No. 96-0706 (BPAI 1997) (not binding precedent; copy enclosed as Exhibit 2) (reversing rejection where “examiner appears to have given little or no weight to what he has characterized as allegations and opinions of declarants skilled in the art.”)

2. Independent Claim 50

Independent claim 50 recites a cover and wastewater combination comprising:

wastewater that includes sewage and/or industrial waste; and
at least two panels removably linked to each other, the panels being positioned over and in direct contact with the wastewater;
where each panel contains, but is not completely filled with, an insulation material.

The Office takes issue with the phrase “at least two panels removably linked to each other.” Action at pp. 3-4. There is adequate support in the original application for this language for the reasons set forth above in section E.1.a. Therefore, the written description and new matter rejections of claim 50 and its pending dependent claims should be withdrawn.

3. Independent Claim 55

Independent claim 55 recites a cover and wastewater combination comprising:

wastewater that includes sewage and/or industrial waste;
at least two panels removably linked together in overlapping relationship over the wastewater; and
means for removably linking the panels in overlapping relationship, the means comprising fasteners and openings defined in each of the panels;
where the openings in one of the panels are positioned above the openings in another of the panels to form pairs of openings of different panels, and one of the fasteners is disposed through each pair of overlapping openings so as to removably link the overlapping panels.

The Office appears to take issue with the terms “removably linked,” “removably linking,” and “removably link.” Action at pp. 3-4. There is adequate support in the original application for this language for the reasons set forth above in section E.1.a. Therefore, the written description and new matter rejections of independent claim 55 should be withdrawn.

4. Independent Claim 56

Independent claim 56 recites a cover and wastewater combination comprising:

wastewater that includes sewage and/or industrial waste;

a plurality of panels positioned over the wastewater, the panels being removably linked together to form a non gas-tight cover system, each panel comprising a geomembrane; and

insulation material sealed inside each panel by a weld.

The Office takes issue with the term “removably linked.” Action at pp. 3-4. There is adequate support in the original application for this language for the reasons set forth above in section E.1.a. Therefore, the written description and new matter rejections of claim 56 and its pending dependent claims should be withdrawn.

5. Independent Claim 60

Independent claim 60 recites a cover comprising:

a plurality of panels configured for use over wastewater, the panels being removably linked together such when the cover is positioned over wastewater, gas from the wastewater can travel from below the cover to above the cover through gaps in the removably linked panels;

each panel comprising a material that contains, but is not filled completely with, insulation.

The Office appears to take issue with the bolded language “the panels being **removably linked** together such when the cover is positioned over wastewater, **gas from the wastewater can travel from below the cover to above the cover through gaps in the removably linked**

panels” based on its statements on pages 3 and 4 of the Action. There is adequate support in the original application for the removably linked language for the reasons set forth above in section E.1.a. In addition, there is adequate support in the original application for the “gas from the wastewater can travel from below the cover to above the cover through gaps” language for the reasons set forth above in section E.1.b. Therefore, the written description and new matter rejections of claim 60 and its pending dependent claims should be withdrawn.

6. Independent Claim 63

Independent claim 63 recites a method of manipulating a cover comprising:

linking at least two panels such that (a) the panels are adjacent to each other and (b) gas can migrate through gaps between the panels, each panel comprising material that contains, but is not completely filled with, insulation; and

disposing the panels over wastewater that includes sewage and/or industrial waste.

The Office appears to take issue with the language “gas can migrate through gaps between the panels” based on its statement that “[t]here is no mention whatsoever of gases, gaps, or the desirability to allow gases to escape/travel/migrate through gaps.” Action at p. 3. There is adequate support in the original application for this language for the reasons set forth above in section E.1.b. Therefore, the written description and new matter rejections of claim 63 and its pending dependent claims should be withdrawn.

F. Claim 56 Is Patentable over Dearing

The Office rejected examined claims 56 and 57 as being anticipated by US 4,197,595 to Dearing. Applicants do not acquiesce to the Office's assertion that statements in Dearing would have suggested to one having ordinary skill in the art at the time of the invention that the cover system of Dearing could have been used to cover wastewater in a wastewater pond or tank. However, to expedite allowance of this application, Applicants have amended claim 56 to

incorporate the limitations of dependent claims 57 and 58, and submits that the prior art rejection based on Dearing is now overcome and should be withdrawn.

G. Conclusion

Applicant respectfully submits that claims 1-9, 11, 12, 14, 19, 20, 22, 50-56, and 59-70 are in condition for allowance. Should the examiner have any questions, comments, or suggestions relating to this application, he is invited to contact the undersigned attorney at (512) 536-3031.

Date: August 27, 2007

Respectfully submitted,

/Mark T. Garrett/

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